



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Master Chief Petty Officer John W. Todd, USN
(Retired) (Deceased)

File: B-230824

Date: November 14, 1988

DIGEST

The Survivor Benefit Plan (SBP) is an income maintenance program established under federal law for the dependents of deceased service members. The law governing the program identifies the eligible beneficiaries and specifies an order of precedence among them. The SBP law does not authorize service members to treat annuities as assets of their estates, or to designate annuitants in wills or other testamentary instruments, or to appoint guardians or trustees to oversee the disbursement of annuity payments. Hence, a retired Navy petty officer could not effectively in his will either designate an SBP annuitant or designate guardians to disburse the annuity, and the SBP annuity payable upon his death must instead be disbursed in conformity with the applicable provisions of federal law.

DECISION

In this case we conclude that a retired service member may not dispose of a Survivor Benefit Plan (SBP) annuity in his will.^{1/}

BACKGROUND

Master Chief Petty Officer John W. Todd, USN, retired from active service in the Navy and was transferred to the Fleet Reserve on June 1, 1971. After the SBP program was established in 1972, he elected to participate in the program with spouse and child coverage, and he thereby

^{1/} This action is in response to a request for an advance decision received from W. C. Simpson, Disbursing Officer, Navy Finance Center. The request was forwarded here after being cleared by the Department of Defense Military Pay and Allowance Committee and assigned submission number DO-N-1488.

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elected to receive retainer pay at a reduced rate in order to provide an annuity for a widow or child who survived him at the time of his death.

Master Chief Todd and his wife were divorced in 1980. As a result, Mrs. Todd was no longer eligible for an SBP annuity. In the divorce proceedings, Mrs. Todd was awarded custody of their son, Benjamin.

Master Chief Todd died 6 years later in 1986. The Navy then commenced payment of an SBP annuity to Benjamin. The payments have not been made directly to him, however, but rather to Mrs. Todd for her to use on his behalf.

At the time of his death, Master Chief Todd was a resident of Kentucky. His last will and testament contained this provision:

"I hereby bequeath and give all my Survivors Benefit Annuity from the program from the U.S. Navy to my minor son, Benjamin Eric Todd, and direct that my Administratrix and Administrator be guardian of said fund. I leave it to their discretion as to the most prudent investment of said money and further as to the time and manner of disbursing said funds to my minor son."

In compliance with that provision, a Kentucky state court in 1987 appointed Samuel and Barbara Bard of Louisville as fiduciaries to disburse the annuity for Benjamin's benefit.

Mrs. Todd and Benjamin reside in California. Upon learning of the action initiated in Kentucky to divert Benjamin's annuity, she wrote to the Navy asking that the annuity payments continue to be made to her. She said that the regularly paid monthly annuity had become a mainstay of her son's education and maintenance. She also pointed out that her son had never resided with Samuel and Barbara Bard, and she also questioned their ability to ascertain his everyday needs because of their distance from California.

Navy officials have asked us whether Benjamin Todd's annuity should be paid to Samuel and Barbara Bard under the terms of Master Chief Todd's will and the Kentucky court order. They also say that they have continued to pay Mrs. Todd because there is no evidence to suggest that Benjamin's annuity is being misused.

ANALYSIS AND CONCLUSION

In 1972 Congress established the SBP program under federal law for the purpose of providing income maintenance for the dependents of deceased service members.^{2/} That law, as amended, is currently codified in sections 1447 through 1455 of title 10, United States Code. Elections made by service members to participate in the SBP program generally are irrevocable.^{3/} Upon a participating service member's death, a survivor's annuity is payable under 10 U.S.C. § 1450(a) to, in order of precedence:

"(1) the eligible widow or widower or the eligible former spouse;

"(2) the surviving dependent children in equal shares. . . ."

The law governing the administration of the SBP program contains no provisions which might be construed as authorizing service members to override this order of precedence, or to designate annuitants in wills or other testamentary instruments, or to appoint guardians or trustees to oversee the disbursement of annuity payments.

We have long and consistently held that amounts payable from federal funds under federal law to the survivors of deceased service members are not assets of the members' estates, and that such amounts due may not be paid in any manner other than as specified by the applicable federal statutes.^{4/} Hence, it is our view that service members may not dispose of SBP annuities by will or other testamentary instrument, since no provision of federal law authorizes them to do so.

In the present case, therefore, our view is that Master Chief Todd could not effectively in his will either

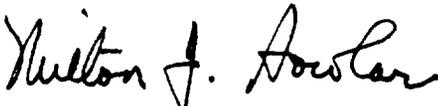
^{2/} Public Law 92-425, Sept. 21, 1972, 86 Stat. 706. See generally, S. Rep. No. 1089, 92d Cong., 2d Sess., reprinted in 1972 U.S. Code Cong. & Ad. News. 3288.

^{3/} See, e.g., 55 Comp. Gen. 158 (1975) and 53 Comp. Gen. 470, 474 (1974).

^{4/} See, e.g., 47 Comp. Gen. 209, 211 (1967); 37 Comp. Gen. 832 (1958); and 1 Comp. Gen. 547 (1922).

designate his son to be an SBP annuitant or designate guardians to disburse the annuity on his behalf. Rather, his son became entitled to the annuity as a dependent child under the provisions of 10 U.S.C. § 1450(a), quoted above, upon the Navy's determination that there was no one with a greater right to the annuity either as an "eligible widow" or "eligible former spouse," as those terms are elsewhere defined in the SBP law.

The SBP law does not specify the procedures to be followed when annuities are payable to minor children. We have previously expressed the view, however, that when SBP annuity payments are due to minors the primary concern is that a good acquittance be obtained.^{5/} We have also expressed the view that, as a general rule, a good acquittance results through payment to the child's natural guardian and custodian in a manner consistent with the laws of the child's state of residence when reasonable assurance is given that the annuity will be used for the child's maintenance, and the matter is otherwise free from doubt.^{6/} There is no indication in the record presented that the Navy has not acted in compliance with that general rule in this case, and we therefore have no objection to continued payment of the annuity directly to Mrs. Todd on behalf of Benjamin Todd.

for 
Comptroller General
of the United States

^{5/} See 62 Comp. Gen. 302, 307 (1983); see also, 65 Comp. Gen. 621, 624 (1986).

^{6/} 62 Comp. Gen., supra, at 307; see also 47 Comp. Gen. 209, supra, and 38 Comp. Gen. 436 (1958).